

NAVAL INSPECTOR GENERAL

REPORT OF INVESTIGATION

**Subj: NAVY SENIOR OFFICIAL CASE 201203333; ALLEGED GIFT
ACCEPTANCE VIOLATION BY RADM CRAIG S. FALLER, USN**

21 Feb 13




J. P. WISECUP
VADM, USN

~~NAVINGEN reports are internal memoranda and constitute privileged information that is not releasable outside DON except with specific approval of NAVINGEN. All requests from sources outside the original distribution for NAVINGEN reports, extracts there from, or related correspondence shall be referred to NAVINGEN for coordination and clearance. (SECNAVINST 5430.57G)~~

~~FOR OFFICIAL USE ONLY~~

Office of the Naval Inspector General

Case Number: 201203333

Report of Investigation

21 February 2013

Subj: NAVY SENIOR OFFICIAL CASE 201203333; ALLEGED GIFT
ACCEPTANCE VIOLATION BY RADM CRAIG S. FALLER, USN

Preliminary Statement

1. On 2 October 2012, the Naval Inspector General (NAVINSGEN) received an anonymous complaint that RADM Craig S. Faller, USN, while assigned as Commander, Carrier Strike Group THREE (CCSG-3) in September 2011, accepted an improper gift in the form of a free hotel room upgrade from a government contractor. Complainant stated that he believed the upgrade "was given by a security industry executive whose company provides port security services for the U.S. Navy in Asia."

2. Prior to being interviewed on 23 January 2012, RADM Faller provided a voluntary written statement to NAVINSGEN dated 14 January 2013 wherein he admitted he accepted the hotel room upgrade offered to him by (b)(6), (b)(6)&(b)(7)(c), the (b)(6)&(b)(7)(a) for the (b)(7)(a) Kuala Lumpur, Malaysia, on 6 September 2011. RADM Faller was forthcoming in his statement and during his subsequent interview about his gift acceptance.

3. NAVINSGEN formed the following allegation for investigation:

Allegation: That RADM Faller improperly accepted a gift from a prohibited source in violation of 5 CFR PART § 2635.202(a) - Standards of Ethical Conduct for Employees of the Executive Branch, Subpart B, Gifts From Outside Sources.

Conclusion: The allegation is substantiated.

~~FOR OFFICIAL USE ONLY~~

~~Do not release outside IG channels without prior approval of the Naval IG.~~

Background

4. RADM Faller commanded Carrier Strike Group THREE from 24 May 2011 until 6 April 2012. His flagship, USS JOHN C STENNIS (CVN-74), and its associated Strike Group deployed from 25 July 2011 until 27 February 2012.

5. While deployed, STENNIS made a port visit to Kuala Lumpur, Malaysia on 4-7 September 2011. In conjunction with the port visit, RADM Faller made hotel reservations at the (b)(7)(a) [REDACTED]. He stayed in the hotel two nights on 5 and 6 September 2011.

Findings of Fact

6. Complainant stated that he "suspected Rear Admiral Faller accepted gratuity from [the] hotel owner who attended [the] reception on board USS JOHN C STENNIS." Complainant described the gratuity as being a free hotel room upgrade to a three-story suite. Complainant also stated (b)(7)(a) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

7. STENNIS arrived in Kuala Lumpur on 4 September 2011. On the night of arrival, the ship was the venue for a reception hosted by the U.S. Ambassador. Several hundred guests, including host nation political, military and business leaders, all of whom were invited by the Embassy, attended the reception.

8. (b)(6), (b)(6), (b)(7)(c) [REDACTED] of the (b)(7)(a) [REDACTED] in Kuala Lumpur, was among the invited guests. He briefly spoke to RADM Faller when they met in the receiving line. During their receiving line conversation, RADM Faller said he mentioned to (b)(6), (b)(6), (b)(7)(c) [REDACTED] that he had a reservation to stay at the (b)(7)(a) [REDACTED]. About their conversation, RADM Faller testified:

I met (b)(6), (b)(6), (b)(7)(c) [REDACTED] at the reception onboard the ship and then again I bumped into him in the [hotel] lobby. I didn't have any prior knowledge or connection with him. I booked the room through MWR on the ship so there was no connection to him in my booking.

...

~~FOR OFFICIAL USE ONLY~~

~~Do not release outside IG channels without prior approval of the Naval IG.~~

In the receiving line (b) (6), (b) (7) (c) introduced himself as the (b) (6) & (b) (7) (a) of a (b) (7) (a). I made mention [to (b) (6), (b) (7) (c)], "Oh, that's great. I'll be staying tomorrow night at your, actually that night at your hotel."

9. RADM Faller testified that his duties aboard the STENNIS the night of the reception prevented him from going ashore. Accordingly, he did not stay in (b) (7) (a) on 4 September 2011 as he originally planned.

10. RADM Faller stated that he checked into the (b) (7) (a) on 5 September 2011 and stayed the night in a regular room. He said that on the morning of 6 September 2011, he was in the lobby waiting for his staff to join him when he was approached by (b) (6), (b) (7) (c). RADM Faller testified:

I bumped into (b) (6), (b) (7) (c) in the lobby and, well, my statement is pretty accurate in that regard. But he said, "Hey, would you like a bigger room?" And I said, "Not necessary. Just me." He said, "Well, I've got this room sitting empty. Why don't you take a look?" "No, sir. Just me and I don't need any bigger room."

[I] went and looked at it and it was about four rooms the size of the room I had connected with a great room with the middle, and they were about the same quality of the room that I had. Actually the room I had was maybe a little nicer in terms of it had complimentary water and, you know, complimentary mints, and this room ended up didn't have any of that.

But I did end up once I saw it thinking to myself that, "Hey, I've got a bunch of staff in an admin room. I'll tell them. I'm sure that somebody could afford to avail themselves of the opportunity here." And that's why I agreed to it.¹

11. (b) (6) & (b) (7) (c) (b) (6) & (b) (7) (c)), the former (b) (6) & (b) (7) (c) for CCSG-3, served with RADM Faller at the time the STENNIS made

¹ RADM Faller retained military legal counsel. About the room upgrade, RADM Faller's counsel argued that the gift he accepted might qualify as a gift "for use in providing recreation, amusement, or contentment of enlisted members under section 7220 of Title 10, United States Code (U.S.C.)."

~~FOR OFFICIAL USE ONLY~~

~~Do not release outside IG channels without prior approval of the Naval IG.~~

its port call to Kuala Lumpur. (b)(6)&(b)(7)(c) stated that (b)(6)&(b)(7)(c), USN, who was the (b)(6)&(b)(7) to RADM Faller at the time, called and notified him that RADM Faller had been upgraded to a suite and that RADM Faller wanted to make the suite available to anyone from the Strike Group staff who might need a place to stay while they were on liberty in Kuala Lumpur. (b)(6)&(b)(7)(c) said he sent an email to the Strike Group staff collective email address and advertised the availability of the suite to all Strike Group personnel.

12. RADM Faller testified that he opened his suite up to his staff and others who were on liberty in Kuala Lumpur the afternoon and evening of 6 September 2011. He stated that after accepting the room upgrade, around 1600 or 1700, he left to meet the Malaysian Chief of Navy for dinner. When he returned from dinner, RADM Faller said he found his room occupied by a fairly large gathering of personnel from his staff, the Air Group and Squadrons, and the Destroyer Squadron Staff. He recalled seeing (b)(6)&(b)(7)(c), USN, (b)(6)&(b)(7)(c), USS MOBILE BAY (CG 53) and (b)(6)&(b)(7)(c), USN, who was then (b)(6)&(b)(7)(c) Carrier Air Group NINE.

13. (b)(6)&(b)(7)(c) and (b)(6)&(b)(7) testified they were among those on liberty in Kuala Lumpur that visited the suite.

14. On night of 6 September 2011, (b)(6)&(b)(7)(c), USN, CCSG-3 (b)(6)&(b)(7)(c), USN, CCSG-3 (b)(6)&(b)(7)(c); and (b)(6)&(b)(7)(c) stayed overnight and used the three spare bedrooms in RADM Faller's suite.

15. In his written statement dated 16 January 2013, (b)(6), (b)(6), (b)(7)(c) said he "personally upgraded RADM Faller's reservation from a room to a suite...." (b)(6), (b)(6), (b)(7)(c) said it was his common practice to upgrade "U.S. Government leaders" staying in his hotel "whether they were on liberty or official business, charging them the maximum per diem rate or MWR-negotiated liberty rate."

16. (b)(6), (b)(6), (b)(7)(c) also stated that the "rack rate" for the suite RADM Faller occupied was approximately \$10,000.00 but that rate did not reflect the "fair market value of the room."² He further stated that "on those occasions when we did actually

² We contacted the (b)(7)(a) Kuala Lumpur and inquired about the current cost of the suite previously occupied by RADM Faller. The hotel informed us that the rack rate for the room in question was 25,000 (MYR) or \$8,381.11.

~~FOR OFFICIAL USE ONLY~~

~~Do not release outside IG channels without prior approval of the Naval IG.~~

rent out the suite, it would have been at the rate of between \$2,000.00 and \$3,000.00 per night."

17. RADM Faller provided us with a copy of his hotel receipt from the (b)(7)(a). It showed that he paid for three nights' accommodations, 4-6 September 2011. A total of 1,452.44 Malaysian Ringgits (MYR) or about \$487 was charged to his personal American Express credit card.

18. (b)(7)(a)

[REDACTED]

19. (b)(7)(a)

[REDACTED]

[REDACTED]

[REDACTED]

~~FOR OFFICIAL USE ONLY~~

~~Do not release outside IG channels without prior approval of the Naval IG.~~

(b)(7)(a)

20. (b)(7)(a)

21. OPNAVINST 4001.1F, 2 July 2010, Acceptance of Gifts, assigns gift acceptance authority to "all flag officers in command, who ultimately report to the CNO" and who have an assigned Staff Judge Advocate (SJA). As CCSG-3, RADM Faller had gift acceptance authority up to \$12,000.00 under the authorities granted by the OPNAV instruction.

22. RADM Faller did not consult with (b)(6)&(b)(7)(c), JAGC, USN, (b)(6)&(b)(7)(c), prior to accepting the hotel room upgrade. RADM Faller did, however, report the upgrade to (b)(6)&(b)(7)(c) sometime after the STENNIS sailed from Kuala Lumpur.

23. Explaining why he did not consult with (b)(6)&(b)(7)(c) before accepting the upgrade, RADM Faller testified:

The circumstances I just don't think set off any alarm bells. It looked like -- I wouldn't have taken the room if it had been just for me, but I knew others could benefit. I didn't, it was just such a chance gathering. I didn't solicit it. I didn't feel that (b)(6), (b)(6), (b)(7)(c) was singling me out because of who I was. I feel if I had never run into him I would have never, it never would have happened.

He (b)(6), (b)(6), (b)(7)(c) led me to believe in the course of conversation, while I can't recall exactly what he said that day, you know, he said, "Hey, I've given upgrades before." I didn't take that to be just to me or me specifically. So it didn't seem extreme or unreasonable or something that would put me in a compromising position at the time.

...

After the port visit I ran it by (b)(6)&(b)(7)(c) I'm very inclusive. I ran everything I did beside (b)(6), (b)(7)(c)

³ See page 252 of DoD SOCO (Standards of Conduct Office) Ethics Resource Library found online at: http://www.dod.mil/dodgc/defense_ethics/resource_library/contractor_list.pdf

~~FOR OFFICIAL USE ONLY~~

~~Do not release outside IG channels without prior approval of the Naval IG.~~

Because it was an upgrade I ran it by him. I explained the size of the room, the circumstances, and, you know, did I need to do anything further, was that acceptable. And he answered no, it was okay. And then after that, frankly, I didn't think about it again until sometime in October this year.

24. (b)(6), (b)(7)(c) explained that, at the time RADM Faller told him about the hotel room upgrade, he did not assign any importance to the matter and did not examine the upgrade against gift acceptance rules. He testified:

I didn't do enough research or any research into the issue at all. I regret that I didn't look into it deeper. I sort of dismissed it as an innocuous event. I thought it was sort of like an on-the-spot upgrade on travel. And frankly, obviously in hindsight with a lot more time to look at it now and to think about it, I certainly should have looked into it a lot more than I did, which was basically I did not look into it.

25. The hotel room upgrade, with an estimated value between \$2000 and \$8,381.11, was not reported by CCSG-3 as an accepted gift as required by OPNAVINST 4001.1F.

Applicable Standard

26. 5 CFR PART 2635 - Standards of Ethical Conduct For Employees of the Executive Branch.

Subpart B - Gifts from outside sources.

§ 2635.202 General standards.

(a) General prohibitions. Except as provided in this subpart, an employee shall not, directly or indirectly, solicit or accept a gift:

- (1) From a prohibited source; or
- (2) Given because of the employee's official position.

§ 2635.203 Definitions.

...

~~FOR OFFICIAL USE ONLY~~

~~Do not release outside IG channels without prior approval of the Naval IG.~~

(b) Gift includes any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of training, transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

Analysis

27. The facts in this case are not disputed; RADM Faller accepted a gift in the form of a hotel room upgrade from (b) (6), (b) (7) (c), the (b) (6), (b) (7) (c) of the (b) (7) (a) Kuala Lumpur. Although RADM Faller testified that he did not consider it a gift when he accepted it, the upgrade was clearly a gift under the standard.

28. We considered the fact that RADM Faller accepted the upgrade in part because the larger suite afforded him the opportunity to host several members of his staff who may have otherwise been in cramped shared quarters while on liberty overnight in Kuala Lumpur. We also noted that an impromptu reception was held in the suite on the afternoon and evening of 6 September and three officers from the Strike Group staff stayed overnight in the available spare bedrooms. We believe, therefore, RADM Faller's motivations accepting the suite were not self-serving.

29. We rejected, however, the possibility suggested by his legal counsel, that it may have been appropriate for RADM Faller to accept the upgrade as a gift to the Navy as contemplated in OPNAVINST 4001.1F, Acceptance of Gifts. The OPNAV instruction discusses 10 U.S.C. Section 7220 which, in pertinent part, provides that "[t]he Secretary of the Navy may accept gifts for use in providing recreation, amusement, and contentment for **enlisted members** of the naval service."⁴

30. RADM Faller had delegated gift acceptance authority up to \$12,000.00. The room upgrade, however, was not offered to RADM Faller or accepted by him as a gift to the Navy. Additionally, he did not follow the requirements specified in the OPNAV instruction for accepting such gifts. He did not consult with his SJA prior to accepting the gift offered to him

⁴ Emphasis added.

~~FOR OFFICIAL USE ONLY~~

~~Do not release outside IG channels without prior approval of the Naval IG.~~

and he did not afterwards report the gift as he was required to do by the OPNAV instruction.

31. (b)(6), (b)(6), (b)(7)(c) clearly offered the upgrade to RADM Faller because of his position. (b)(6), (b)(6), (b)(7)(c) said it was his common practice to upgrade "U.S. Government leaders" staying in his hotel. We determined that the room upgrade was a gift given to RADM Faller because of his rank and official position. We also determined that the (b)(7)(a) was a prohibited source. We concluded, therefore, that RADM Faller accepted an improper gift in violation of the standard.

Conclusion

32. The allegation is substantiated.

~~FOR OFFICIAL USE ONLY~~

~~Do not release outside IG channels without prior approval of the Naval IG.~~